STATE OF MICHIGAN

COURT OF APPEALS

THOMAS MARSACK,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee,

and

THE HOSPITAL REGIONAL MEDICAL CENTER and LAPEER REGIONAL HOSPITAL,

Intervening Plaintiffs-Appellants.

UNPUBLISHED
December 6, 1996

No. 190356
LC No. 94-013287-CK

Before: Bandstra, P.J., and Neff and M.E. Dodge,* JJ.

PER CURIAM.

McLaren Regional Medical Center, along with its affiliate Lapeer Regional Hospital (the hospital), appeals from a circuit court order granting summary disposition to plaintiff Thomas Marsack and against defendant Citizens Insurance Company in plaintiff's action for personal protection benefits (PIP benefits) under Michigan's no-fault act. MCL 500.3101 et seq.; MSA 24.13101 et seq. We reverse and remand this case for entry of an order permitting the hospital to intervene and for further proceedings consistent with this opinion.

I

The underlying facts are largely undisputed. On November 27, 1993, plaintiff was severely injured when he was hit by a car operated by Norah Germain, defendant's insured. Germain reported that plaintiff was lying on highway M-24 when she hit him. Plaintiff was hospitalized for several months, incurring hospital bills totaling over $173,000. Because plaintiff had no insurance himself, he looked to

* Circuit judge, sitting on the Court of Appeals by assignment.

defendant for coverage. Defendant initially denied liability and alleged that plaintiff was ineligible for PIP benefits because his injuries were the result of a suicide attempt. Defendant refused to pay any of plaintiff's medical expenses while its investigation continued.

Plaintiff eventually sought the assistance of attorney Ronald Gricius, and entered into a contingent fee agreement under which Gricius would be entitled to a fee of one-third of any amount recovered. Gricius advised defendant of this arrangement and requested an application for benefits and other documents for plaintiff to fill out and submit to defendant. Before submitting these documents, however, plaintiff filed a complaint seeking PIP benefits under the no-fault act and attorney fees pursuant to MCL 500.3148; MSA 24.13148, which provides that an insurance company is liable for attorney fees where benefits are unreasonably delayed.

The hospital filed a motion to intervene, alleging that it was owed over $166,000, that plaintiff was believed to be indigent, that plaintiff was expected to obtain insurance proceeds to pay for his hospital bill from defendant, and that if Gricius' expected fee of approximately $57,000 were deducted from the PIP benefits the hospital would not be able to collect a significant portion of its bill from plaintiff. The hospital further argued that Gricius's one-third contingent fee was unreasonable, and that he should receive only the fair value of services rendered. The trial court entered an order permitting the hospital to intervene, for a period of three months, for the limited purpose of conducting discovery regarding whether Gricius' services were necessary to secure payment of PIP benefits. The court further ordered that on completion of discovery the hospital would be permitted to petition for an unlimited order of intervention and that, until such time, the hospital would not be required to file a formal pleading.

By stipulation, the hospital's time for conducting discovery was extended twice, and the hospital ultimately filed a motion to compel discovery from defendant. The only attorney to appear at the hearing on the motion was counsel for the hospital, who informed the court that defendant recently had complied with the discovery request. Counsel then orally requested permission to intervene to contest the reasonableness of Gricius' proposed $57,000 attorney fee. The court orally granted the hospital's request, and a proposed order was prepared. However, plaintiff objected to the order, stating that the order permitted relief which was not asked for in the motion filed by the hospital. That is, the hospital's motion was to compel discovery and the relief in the order was to grant intervention.

Meanwhile, plaintiff and defendant both accepted the proposed settlement amount of the mediation panel. Plaintiff then filed a motion for summary disposition, arguing that the case had been mediated, that the hospital had never filed a motion to intervene, and that Gricius' one-third contingent fee should be paid from the PIP benefits paid by defendant. In its response to the motion defendant agreed that the case should be summarily resolved, but noted that defendant had not unreasonably delayed payment and thus was not liable for attorney fees in addition to the PIP benefits it had already agreed to pay. The hospital also responded to plaintiff's motion for summary disposition and asked that the motion be denied, that the hospital be permitted to intervene, and that a hearing be held to determine an appropriate attorney fee to Gricius.

At the hearing held on plaintiff's motion for summary disposition and to settle the court's order granting intervention, plaintiff argued that the case essentially had been settled because both parties accepted the mediation award, which was the full amount of the medical bills owing to the hospital. Counsel for the hospital suggested that questions of fact remained regarding whether the PIP benefits were unreasonably delayed, which would result in defendant being liable for Gricius' attorney fees, or whether the benefits were merely overdue, in which case a reasonable attorney fee would be deducted from the PIP benefits. Counsel for the hospital renewed its request to intervene and file a complaint outlining its position regarding the attorney fee issue.

The circuit court held that although defendant investigated plaintiff's claim for PIP benefits, the benefits were overdue and summary disposition was appropriate. The court granted plaintiff's motion for summary disposition but failed to rule on the hospital's request to intervene.

II

At the outset, we must determine whether we have jurisdiction to consider this appeal. It is without question that this Court has jurisdiction over appeals from a circuit court's summary disposition order. MCL 600.308; MSA 27A.308. This is not the only consideration, however. MCR 7.203(1) provides that this Court has jurisdiction over an appeal of right filed by "an aggrieved party." The question thus becomes whether the hospital, which was never formally granted the status of an intervening party, is nonetheless an "aggrieved party" entitled to appeal the summary disposition order. We conclude it is.

An "aggrieved party" is one who has an interest in the subject matter of the litigation. See *In re Freeman Estate*, 218 Mich App 151, 155; 553 NW2d 664 (1996). The hospital, which provided plaintiff with medical care for his injuries, has an interest in the subject matter of the litigation, i.e., the payment of PIP benefits to plaintiff. Indeed, PIP benefits are payable for "allowable expenses," which are defined as "consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a); MSA 24.13107(1)(a). The PIP benefits defendant agreed to pay will be diminished, from the hospital's perspective, if reduced by Gricius' proposed one-third contingent fee. Accordingly, the hospital was directly affected by the trial court's grant of summary disposition and is "an aggrieved party" entitled to bring the instant appeal.

III

Having determined that this case is properly before us, we now turn to the issues raised by the hospital on appeal. The hospital first argues that it should have been permitted to intervene in this matter. We agree.

Intervention by right is governed by MCR 2.209(A), which provides that, on timely application, a person has the right to intervene in an action:

> (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

As demonstrated above, the hospital has an interest in the subject matter of the litigation. Further, insofar as Michigan law does not permit a "hospital lien" on insurance proceeds, we find that intervention is necessary to permit the hospital to protect its interest in the PIP benefits paid to plaintiff, who has an outstanding bill with the hospital. Cf. *Tucker v Clare Bros Limited*, 196 Mich App 513, 517-518; 493 NW2d 918 (1992). Finally, neither plaintiff nor defendant represented the hospital's interest in being paid in full. We conclude that the hospital fulfilled the requirements to intervene in the present action as of right.

Plaintiff insists that the hospital's motion to intervene was both untimely and defective because it was not accompanied by "a pleading stating the claim or defense for which intervention is sought," as required by MCR 2.209(C)(2). We disagree. The hospital first asserted its desire to intervene within four months after defendant filed its answer, and well before this case was submitted to mediation. The hospital's motion was not untimely. See *Karrip v Cannon Twp*, 115 Mich App 726, 731; 321 NW2d 690 (1982) (right to intervene should be asserted within a reasonable time).

Further, although the hospital did not file a pleading along with its motion to intervene as required by the court rule, the hospital made clear its position and the supporting authority throughout these proceedings. Moreover, the trial court's order granting the hospital the right to temporarily intervene expressly provided that it would not be required to file a pleading until it was granted full intervention. In addition, plaintiff acknowledged that it was aware of the hospital's position by moving for summary disposition following acceptance of the mediation award, instead of simply seeking a judgment under MCR 2.403(M)(1). We will not elevate form over substance, *Tucker*, *supra*, at 518-520, and thus remand this matter to the circuit court for entry of an order granting the hospital permission to intervene.

IV

We now turn to the question of whether, because the hospital's motion to intervene was still pending, the circuit court's grant of summary disposition was premature. No question remains with regard to defendant's liability for PIP benefits in the amount recommended by the mediation panel and accepted by plaintiff and defendant. However, defendant and the hospital insist that the PIP proceeds were not "overdue" because plaintiff filed the instant action before providing defendant with "reasonable proof of a fact and the amount of the loss sustained." MCL 500.3142; MSA 24.13142.

Moreover, throughout these proceedings the hospital has maintained that Gricius' one-third contingent fee is unreasonable, and that whatever fee Gricius is permitted should be paid by defendant in addition to the PIP benefits it has already agreed to pay plaintiff. Because the hospital was not

permitted to intervene, the trial court did not address these matters before granting plaintiff's motion for summary disposition.

Our review of the record reveals that genuine issues of material fact remain in regard to whether Gricius is entitled to an attorney fee pursuant to MCL 500.3148(1); MSA 24.13148(1) and, if so, the reasonableness of Gricius' one-third contingent fee and the appropriate source of that fee. These issues are to be resolved by the circuit court on remand.

The circuit court's order granting summary disposition is reversed. We remand this case to the circuit court for entry of an order permitting the hospital to intervene, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Michael E. Dodge